

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919.

CHARLES E. SMITH,

Appellant,

v.

No. 593

KANSAS CITY TITLE AND
TRUST COMPANY *et al.*,

Appellees.

Brief of Appellee Kansas City Title and Trust Co.

This is a suit by a stockholder to enjoin the defendant company from investing in certain Federal Land Bank bonds and Joint Stock Land Bank bonds issued under authority of the Federal Farm Loan Act as amended, upon the ground that said act as amended is unconstitutional. Defendant moved to dismiss the bill for want of equity. The motion was sustained, and the bill dismissed. Plaintiff appeals.

After the motion to dismiss was filed, the Federal Land Bank of Wichita, Kansas, and the

First Joint Stock Land Bank of Chicago, Illinois, were permitted to intervene on the ground that they were vitally interested in the issues involved in the suit. They adopted the defendant's motion as their own, and were heard on argument in support of the motion. The Attorney General of the United States was represented, and an argument made on his behalf as *amicus curiae*.

By these interventions and appearances, the interests of the titular defendant in the litigation became of secondary importance. The trust company appears rather as a *casus belli* than as a chief belligerent. It desires to make the proposed investment if the act, including the tax exemption features, is valid; it does not desire to make the investment if the act be invalid. The purchase of the bonds would be advantageous to the defendant if they are legal and tax free; otherwise, not.

The interests of the intervenors on the other hand, and of the Attorney General as representing the government, are paramount. The issue involves the life of the Federal Land Banks and the Joint Stock Land Banks, or at least their practical ability to get sustenance through the issuance of tax free bonds, and it involves the power of the government to create these agencies for the financial aid of the agricultural class, which Congress has determined to be for the public welfare.

We desire, therefore, on behalf of the de-

fendant, rather to make the issues clear to the Court than to go over at any length the same ground that is so thoroughly covered by those representing the government and the Land Banks themselves. A clarifying of the issues is often more helpful than a reiteration of argument on one side or the other.

There is but one question in the case: Is the act constitutional? This involves three parts:

Are the provisions referring to Federal Land Banks constitutional?

Are the provisions referring to Joint Stock Land Banks constitutional?

Are the tax exemption provisions constitutional?

The contentions of appellant in his brief, stripped of matters of inducement going only to the policy of the act and not to its validity, may be reduced to their lowest terms as follows:

1. The powers of Congress are limited to those expressly and impliedly granted by the constitution.

2. There is no power to enact this legislation granted to Congress by the constitution, unless it be under the terms of Article 1, Section 8, Clause 1.

3. Article 1, Section 8, Clause 1 confers only the power to collect and expend the public moneys, and this act is not relevant to such power.

The first proposition has been too long established to be the subject of controversy.

The second proposition must likewise be admitted. An examination of the various powers granted to Congress discloses none on which the act in question might be sustained except Article 1, Section 8, Clause 1.

The single question then remains: Is the act relevant to the power to collect and expend the public money?

I.

The decision of this question seems to depend upon whether the Court considers what might have been done or what actually was done under the act. Appellant argues that Federal Land Banks might have been organized with private capital and conducted without public moneys. This was a theoretical possibility, but what was the fact?

The fact was that Congress appropriated \$9,000,000 of public moneys for the purpose of making loans to farmers through the Federal Land Banks. \$8,892,130 was actually paid out for the stock of these banks, and \$8,265,809 was so in use on July 1, 1919. Was this appropriation lawful?

Under Article 1, Section 8, Clause 1, Congress has power to appropriate moneys to provide for the general welfare. It is admitted, or must be

admitted, that the development and encouragement of agriculture is a matter of such vital concern as to come within these provisions. This can hardly be disputed at a time when the prosperity of the entire country and the comfort and happiness of all its citizens is seen to depend so completely upon the increase in agricultural production. Therefore, Congress has power to appropriate moneys to encourage agriculture.

Congress does appropriate moneys to be loaned to farmers at low rates of interest. Does this encourage agriculture? Undoubtedly. Therefore, Congress has power to so appropriate.

Congress provides that this money shall constitute the capital of certain corporations to be formed under its authority, and shall be by such corporations loaned out to farmers, all under the regulation of the federal board created by the act. Is not this an appropriate method of making the loans? The national bank cases establish the propriety of the use by Congress of corporations in the administration of its powers. Therefore, Congress might properly form such corporations and use them in the designated manner.

The public moneys are thus appropriated and paid out for a proper purpose through proper means. Why then is there not a lawful appropriation, lawfully administered?

Can it make any difference that the loans once made are pledged to raise more money to

make more loans? Congress makes an appropriation to furnish seed to farmers. The seed is planted and multiplies. The farmer sells his crop and buys more seed and raises more crops, but the original appropriation and the means of carrying it into effect are not thereby made unlawful.

Can it make any difference that the appropriated money is ultimately to be returned to the public treasury? If, instead of giving seeds to farmers as above suggested, Congress should simply loan seeds or the money to get seeds subject to return after harvest, the appropriation would certainly not be invalidated or the means for making and collecting the loans inappropriate or improper.

Is it not beside the point, therefore, to consider what might have happened when it is so evident what did happen? And, in view of the actual operation under the act, is it helpful to split hairs over the question whether the banks are incidental to the appropriation or the appropriation incidental to the banks? Congress has no express power to protect and foster American industries by means of a tariff. There has long been a controversy between the advocates of a protective tariff and a tariff for revenue only, but this is a controversy of policy and not of power. The courts have never been willing to go behind the acts themselves, although it has been a matter of common knowledge, if not of actual demonstration, that the revenue features were incidental to

the protective features not only in the mind of Congress but in the very provisions of the statutes themselves. It was almost self-evident that the purpose was not to raise money but to exclude commodities. The courts refused, however, to consider motives: the acts did raise revenue, and the manner of so doing was wholly within the discretion of Congress except as limited by the constitution itself.

II.

If, therefore, the appropriation was proper, the means adopted to carry the act into effect must be considered as a whole and not piecemeal. This doctrine is recognized and applied in *First National Bank v. Fellows*, 244 U. S. 416, 37 Sup. Ct. 734. So considered, are not the Joint Stock Land Banks an integral part of the entire scheme and thus sustainable, as well as the Federal Land Banks, under the general welfare clause? They are governmental depositaries and fiscal agents, also, the creation of which is clearly within the power of Congress.

III.

The question of tax exemption must be answered in the same manner as the preceding questions. If Congress has power to create and use

the Land Banks as governmental agencies, there can be no doubt of its power to exempt them from taxation. The policy may be arguable but the power is not. It is self-evident that Congress may protect its own means from state interference, and may of course levy its own taxes upon them or not, as it pleases. There are no grounds against the tax exemption feature except those urged against the banks themselves.

Respectfully submitted,

JUSTIN D. BOWERSOCK,
*Solicitor for Appellee, Kansas City
Title and Trust Company.*